

# Sam Wercinski, Commissioner

Arizona Department of Real Estate

[www.AZRE.gov](http://www.AZRE.gov)

## Promoting Mutual Respect

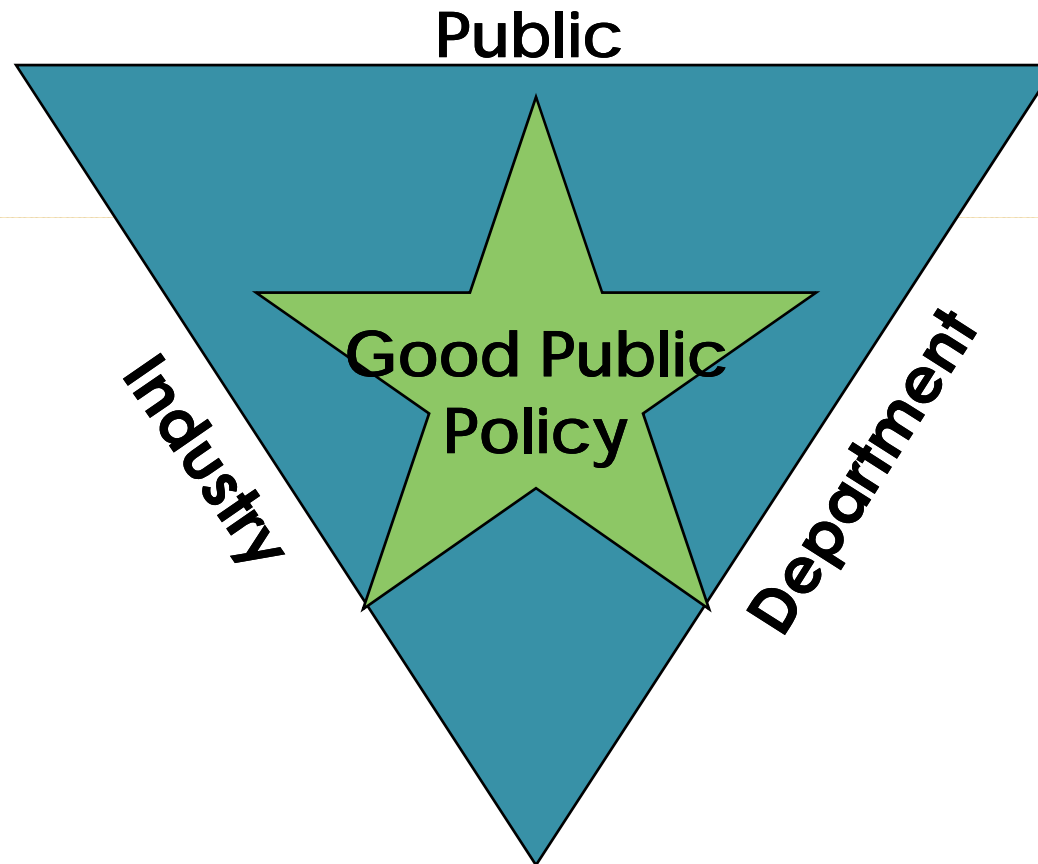


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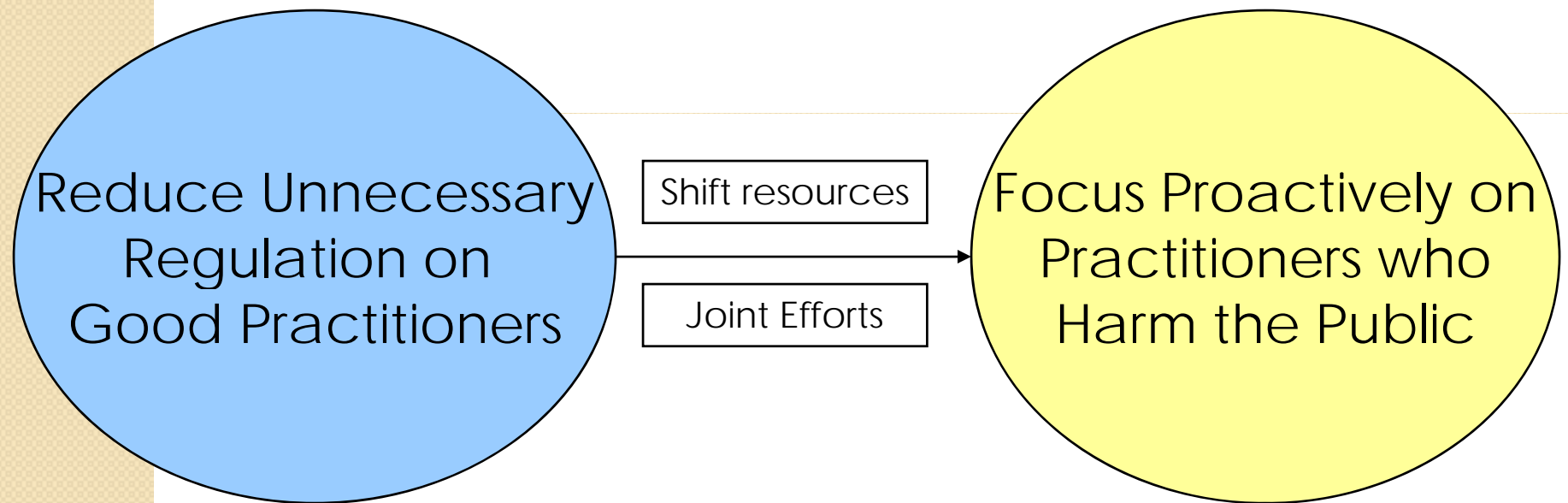
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October 2007

# Three Entities Principle

## A New Focus on Standards



# Change in Focus to Better Protect the Public



# Focus on Education and Enforcement

- Prevention through Education
  - Community Outreach and Education
  - Lot Split Workshops
  - Earth Fissure Workshops
- Credible and Timely Enforcement
  - Reasonable and Fair

# Focus on Illegal Subdividers

- Consumer Fraud
  - Lack of disclosure, infrastructure, access
- Reputable Developers Lose
  - Unfair competitive edge gained by violators
  - Legitimacy of industry damaged
- Costs to Arizona
  - Impact Ranching and Agricultural Resources
  - Theft of Taxpayers' resources
  - Harm to the state's reputation

# Illegal Subdivision Cases

by County As of October 1, 2007

County	Open Investigations	Enforcement & Compliance
Apache	4	4
Cochise	4	1
Coconino	0	3
Gila	4	1
Graham	1	0
La Paz	2	0
Maricopa	32	71
Mohave	4	4
Navajo	1	6
Pima	3	7
Pinal	11	7
Santa Cruz	1	0
Yavapai	9	8
Yuma	2	0
<b>TOTAL</b>	<b>78</b>	<b>112</b>

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# Community Outreach and Education

## Arizona Department of Real Estate

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# Lot Splits – Legal or Not?

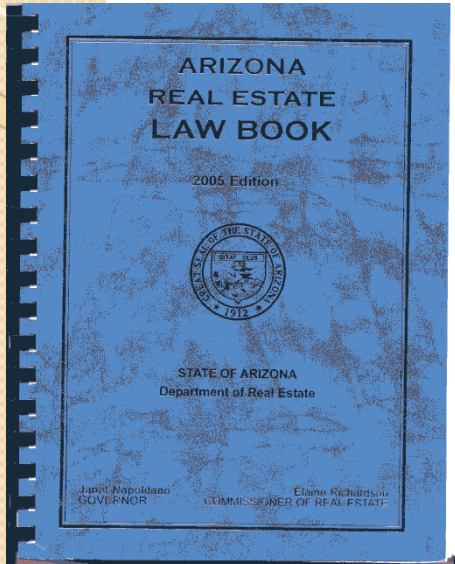


Presented By:

**Sam Wercinski**, Commissioner, ADRE

**Roy Tanney**, Asst. Commissioner, Developments

# Definitions



## **“Subdivision” -**

Land divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, **into six (6) or more lots**, parcels or fractional interests.

A.R.S. §32-2101(55)

## **"Subdivider" –**

Any person who offers for sale or lease **six or more lots** in a subdivision or who causes land to be divided into a subdivision. A.R.S. §32-2101(54)



# Definitions

## **"Unsubdivided Lands" –**

Land divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more parcels and the parcels are **thirty-six acres or more each but less than one hundred sixty acres** each.

A.R.S. §32-2101(59)

## **“Acting in Concert” –**

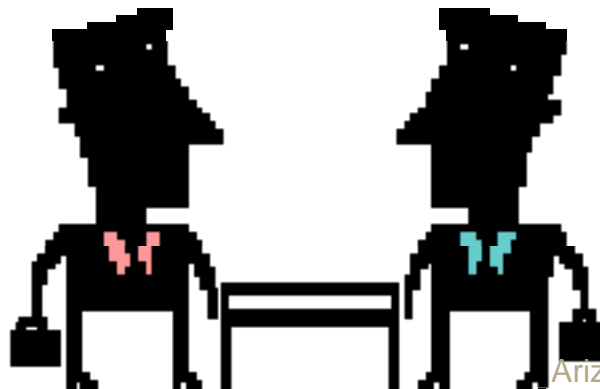
Collaborating or working together on a plan.

A.R.S. §32-2101(1)

# What is “Acting in Concert”?

*“[T]o act in concert means only that the parties must agree to act together to divide their land; they need not agree to violate the law. An agreement can be inferred from the parties’ conduct.”*

- Arizona Court of Appeals ruling, June 1998



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# Definitions

## **“Common Promotional Plan” –**

If the land is offered for sale by a person or group of persons collaborating or working together. A.R.S. §32-2101(14)

# Investigation Red Flags

- Familial relationship between parties
- Business relationships between parties
- Lot release provisions/purchase options
- Maps, drawings or surveys indicating further division
- CC&Rs indicating development activity
- Well share or road maintenance agreements
- Number and placement of easements

# Local and State Oversight

County and City – Manage the division and improvement of the land via the plat approval process.

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ADRE – Regulate the sale of the land via the Public Report process. Public Reports are required prior to offering lots for sale.

# Questions

Q: Over what timeframe does the “more than 5” rule apply?

**A: There is no time limit**

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Q: If a person buys a property and creates 5 lots, selling all or some of the lots, and 20 years later buys and offers for sale adjacent property, is a public report required?

**A: Yes**

# Questions

- A person owns 21 lots, all 2+ acres in size and located in existing subdivisions.
- She wants to split them to 1+ acre lots.
- The lots are all single, non-adjacent lots and are spread out over four different townships and ranges.
- The townships and ranges are all adjacent to one another.

Q: If she splits these lots, creating 42 lots, is she subdividing and will this require her to obtain a public report?

**A: If there are 6 or more lots in any one platted subdivision, the answer is Yes; otherwise No.**

# Questions

Scenario: An owner splits his land into 5 lots. Two brothers would like to buy one each.

Q: Can they each buy a lot and then split them into 5 lots each?

**A: Being brothers makes working in concert much more likely but it is not the only determining factor.**



# Questions

**Q:** If a person buys two 40 acre non-adjacent parcels within an unsubdivided land development, can the person split each 40 acre parcel into 5 new parcels without creating a subdivision?

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**A:** No, this would be subdividing. A subdivision plat and public report is required prior to sale of the lots.

# Questions

Q: A person owns one forty acre parcel. He offers for sale four ten acre parcels and agrees to carry a note on the parcels with lot release provisions to accommodate further splitting. Is this subdividing?

**A: Yes-the definition of Subdivision includes “lands divided or proposed to be divided”**

# Questions

A person records a Land Survey creating forty 36 acre parcels and markets the parcels en masse as “Red Rock Heights”. He also builds features on the site identifying it as same. Subsequent owners split the parcels and continue to market property as “Red Rock Heights”.

Q: Is this subdividing?

**A: Maybe, there could be Common Promotional Plan issues to overcome.**

# Questions

Is a Public Report required:

... when a split into more than 5 parcels occurs?

**Yes, but only if offered for sale.**

... when there are more than 5 parcels and one or more is sold?

**Yes, if within the boundary of a recorded plat or survey**

... when there are more than 5 parcels and one or more is advertised for sale?

**Yes, if within the boundary of a recorded plat or survey.**

... when there are more than 5 parcels and construction on homes is started/finished?

**No. The Public Report is required prior to offer for sale.**

# Most Common Violations

- Failure to obtain a Public Report when selling 6 or more lots.
- Developers of an Unsubdivided Land Development market their development promoting further splits by purchasers.
- Persons working in concert to avoid the subdivision laws.
- Misrepresentation or failure to disclose material facts in a public report.
- Failure to amend a public report when required.

# Enforcement Actions

## **ADRE action on violations may include:**

- Request the subdivider to voluntarily suspend sales.
- Issue and record a summary order suspending sales.
- Consult with the city or county planning and development officials about enforcement procedures and solutions to cure the violation.
- Buyer rescission.
- \$1,000.00 civil penalty for each infraction.
- Revocation or suspension of real estate licenses.
- Education requirements.

# Contact Information

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